EXHIBIT A

IN THE UNITED STATES DISTRICT COURT

APR 0 5 2002

FOR THE DISTRICT OF HAWAII

SPK LEK

CIVIL NO. CV01-00446 WAYNE BERRY, Plaintiff, (Copyright)

vs.

FLEMING COMPANIES, INC., aka FLEMING FOODS, INC., aka FLEMING, DOE INDIVIDUALS 1-50 AND DOE PARTNERSHIPS, CORPORATIONS AND OTHER ENTITIES 1-20 S 1-50,

Defendants.

DEPOSITION OF MARK DILLON

Taken on behalf of the Plaintiff pursuant to Notice, on Monday, March 25, 2002, commencing at 9:00 a.m., at the Law Offices of Lynch Ichida Thompson Kim & Hirota, 1132 Bishop Street, Suite 1405, Honolulu, Hawaii 96813.

In Park Alex Process For Plaintiff Wayne Berry	<i>:</i> •	,		March 25, 2002			
Feet Planefff Wayne Berry TDMOMPTED 100AM, PSD TDMOMPTED 100AM	1		1	PAGE			
Lyron Flohish Thompson Kinn & Billion Horself Liver Holds Thompson Kinn & Billion Floring Foots, Inc., Ask Plenning LYR MITTESO LYR	1			2 Plaintiff's Exhibit 11 108 (2-page memo addressed to Wayne Berry from			
For Defendant Finning Companies, Inc., aka Penning Food, Inc., aka Penning Foo		Lynch Ichida Thompson Kim & Hirota 1132 Bishop Street, Suite 1405 Honolulu, Hawaii 96813		4 Plaintiff's Exhibit 12 110 (2-page computer screen print displaying			
Femilia Food, Inc., &t. Plenning	1	For Defendant Fleming Companies, Inc., aka		Plaintiff's Exhibit 13 114			
First Hawaiian Content 959 Blades Seriel, Sail 2600 11 Content of the Content of	l	LEX R. SMITH, ESQ.	1	Plaintiff's Exhibit 14 115			
Page 3 IN DEX INDEX	10	First Hawaiian Center 999 Bishop Street, Suite 2600 Honolulu, Hawaii 96813		master load plan for API) Plaintiff's Exhibit 15 116			
Page	12	For Defendant Hawaiian Express Service,	12	the company name screen) Plaintiff's Exhibit 16 117			
1099 Alakes Street 1099 Al	14	ROY J. TJIOE, ESQ. Goodsill Anderson Quinn & Stifel	14	pop-up screen for FCS Logistics) Plaintiff's Exhibit 17 119			
Also Present: Wayne Berry 19 RePORTED BY. Laurn Savo, CSR No. 347 Plaintiff a Exhibit 1 140 (2-page computer series Tabble 19 (2-page computer series Tabble 19 (2-page computer series Tabble 19 (2-page computer series Tabble 12 (2-page computer series Tabble 13 (2-page computer series Tabble 13 (2-page computer series Tabble 13 (2-page computer series Tabble 14		1099 Alakea Street Honolulu, Hawaii 96813	16	for costing services) Plaintiff's Exhibit 18 124			
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222	1	REPORTED BY: Laura Savo, CSR No. 347 Notary Public State of Hawaii	- 1	Functional State of Logistics Database)			
23 Grage letter addressed to Server 25 Carpage letter addressed to Server 26 Carpage letter addressed to Server 27 EXAMINATION: 28 PAGE 29 EXAMINATION: 20 EXAMINATION: 30 BY MR. HOGAN 40 Lunch Recess 41 Lunch Recess 41 Lunch Recess 41 Lunch Recess 42 EXAMINATION: 43 EXHIBITS FOR IDENTIFICATION: 44 Lunch Recess 45 Lunch Recess 46 Page and is attached hereto.) 47 Having been called as a witness and being first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows: 48 Mark Dillon') 49 Plaintiff a Exhibit 2 48 Plaintiff a Exhibit 3 40 Mark Dillon') 40 Plaintiff a Exhibit 4 47 Plaintiff a Exhibit 5 48 Plaintiff a Exhibit 4 48 Plaintiff a Exhibit 4 48 Plaintiff a Exhibit 5 40 Q Good morning, Mr. Dillon. Would you, please, state your full name and spell it for the court reporter. 40 Plaintiff a Exhibit 5 41 (21-page document extitled "Exhibit 8.txt") 41 Plaintiff a Exhibit 5 42 (21-page document extitled "Exhibit 8.txt") 43 Plaintiff a Exhibit 5 44 (21-page document extitled "Exhibit 8.txt") 45 Plaintiff a Exhibit 5 45 (21-page document extitled "Exhibit 8.txt") 46 Plaintiff a Exhibit 7 47 (21-page document extitled "Exhibit 8.txt") 48 Plaintiff a Exhibit 5 49 Plaintiff a Exhibit 6 40 Page document extitled "Exhibit 8.txt") 40 Plaintiff a Exhibit 7 40 Plaintiff a Exhibit 7 41 Plaintiff a Exhibit 8 41 Plaintiff a Exhibit 9 42 Plaintiff a Exhibit 9 43 Plaintiff a Exhibit 9 44 Plaintiff a Exhibit 9 45 Plaintiff a Exhibit 9 46 Plaintiff a Exhibit 9 47 Plaintiff a Exhibit 9 48 Plaintiff a Exhibit 9 49 Plaintiff a Exhibit 9 40	21 22	·	- 1	(2-page document entitled "Fleming Asset Purchase from API")			
Page 3 INDEX PAGE 1 INDEX PAGE 2 EXAMINATION: PAGE 2 EXAMINATION: PAGE 3 BY MR. HOGAN 5 Lunch Recess 119 4 MARK DILLON 5 EXHIBITS FOR IDENTIFICATION: 5 EXHIBITS FOR IDENTIFICATION: 5 EXHIBITS FOR IDENTIFICATION: 6 EXHIBITS FOR IDENTIFICATION: 6 EXHIBITS FOR IDENTIFICATION: 7 Plaintiff's Exhibit 1 (9-page document entitled "Declaration of Mark Dillon") 8 Mark Dillon" 8 Mark Dillon" 8 Plaintiff's Exhibit 3 (1-page document entitled "Exhibit 8 Ext") 10 Plaintiff's Exhibit 4 (21-page document entitled "Exhibit 8 Ext") 11 Plaintiff's Exhibit 5 (21-page document entitled "Exhibit 8 Ext") 12 Plaintiff's Exhibit 5 (21-page document entitled "Exhibit 8 Ext") 15 Plaintiff's Exhibit 7 75 (21-page document entitled "Exhibit 2 Ext") 17 Plaintiff's Exhibit 7 75 (21-page document entitled "Exhibit 2 Ext") 17 Plaintiff's Exhibit 7 75 (21-page document entitled "Exhibit 2 Ext") 17 Plaintiff's Exhibit 7 75 (21-page document entitled "Exhibit 2 Ext") 17 Plaintiff's Exhibit 5 7 (21-page document entitled "Exhibit 2 Ext") 17 Plaintiff's Exhibit 5 (10-page document entitled "Exhibit 2 Ext") 17 Plaintiff's Exhibit 5 (10-page document entitled "Exhibit 2 Ext") 17 Plaintiff's Exhibit 5 (10-page document entitled "Exhibit 2 Ext") 17 Plaintiff's Exhibit 5 (10-page document entitled "Exhibit 2 Ext") 17 Plaintiff's Exhibit 7 75 (10-page document entitled "Exhibit 2 Ext") 17 Plaintiff's Exhibit 9 (10-page document entitled "Exhibit 2 Ext") 18 Plaintiff's Exhibit 9 (10-page document entitled "Exhibit 2 (10-page letter addressed to Mark S. Hansen (10-page letter address	23 24			(2-page letter addressed to Steve Christensen from Pete Schaul, dated 6-11-99)			
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() COUNT DESCRIPTION AND VON		Plaintiff's Exhibit 10 107		•			
25 Q Have you ever testified in court?	25	(3-bake norminan cininen Trus Com	1				

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	Page 86	1	Page 88			
1	reconstructed for myself, for my own purposes,	1	A Twice.			
2	just to help me remember the kind of chain of	2	Q Okay. When was the first time?			
3	events at certain times just so I could represent	3	A Friday.			
4	what I understood to be the facts at that time.	4	Q Friday. I presume you've spoken to him			
5	Q Why did you create that, whatever it	5	on the phone or had other contacts with him?			
6	is, the document you're talking about?	6	A Yes.			
7	A Well, I think it had a number of	7	Q We don't want to know what you were			
8	purposes. I created it just really to clarify,	8	talking about. So you met with him Friday?			
9	to gather together any information I had on what	9	A Yes.			
10	was going on at certain points of time that were	10	Q When was the other time?			
11	at issue, you know, during which there were	11	A Just this morning.			
12	developments that were	12	Q How long did you meet with him on			
13	MR. SMITH: Is this the memo you wrote	13	Friday?			
14	to me, or is this something different you're	14	A Forty-five minutes, something like			
15	describing now?	15	that.			
16	THE WITNESS: You've seen it, yeah.	16	Q Was anyone else in the room with you?			
17	You saw it.	17	A No.			
18	MR. SMITH: This is the one you sent to	18	Q Did you discuss your testimony with			
19	me that was on the first CD I got?	19	Ralph Stussi? That's S-t-u-s-s-i.			
20	THE WITNESS: Yes.	20	A No.			
21	MR. SMITH: Okay. So this is	21	Q When was the last time you spoke with			
22	something Well, you can tell him what the	22	Mr. Stussi?			
23	purpose was, but it sure seemed like it was	23	A I saw him Friday, actually.			
24	prepared for me. It was addressed to me.	24	Q You saw him Friday?			
25	THE WITNESS: Yes. Well, it was	25	A Yeah.			
	Page 87		Page 89			
1	addressed to him, but I explained to him my	1	Q Is Mr. Stussi still employed at Fleming			
2	recollections about all the things that were	2	Kapolei?			
3	all the kind of events, like in 2000, Mr. Perez	3	A I'm not sure.			
4	says, "In 2000, the database was down," what led	4	Q Why do you say that?			
5	us to reply as FlemingPO.exe and how we did that,	5	MR. SMITH: Well, I'll just tell you.			
6	those kinds of things. And any emails, I made	6	The answer's no.			
7	references to any emails or documentation I had	7	BY MR. HOGAN:			
8	just so I would have a way to substantiate my	8	Q All right. Who's the boss out there?			
9	recollection, and I gave a copy of that to	9	A The boss would be Brian Christensen.			
10	mister	10	Q Do you have any information regarding			
11	MR. SMITH: Yeah, I would characterize	11	why Mr. Stussi's no longer in Kapolei?			
12	it, actually, as sort of a memo from Mark to me	12	A No, I don't.			
13	explaining the things, what the things were and	13	Q Have you heard any speculation from any			
14	where they fit into the time line of the rest of	14	employees			
15	the information on the CD, and that was actually	15	A No, I haven't.			
16	one of the reasons we had a delay in producing	16	Q at Fleming?			
17	the CD to you because I told him that we weren't	17	Did you discuss that with Theresa Noa?			
18	supposed to produce that memo to your side.	18	A No, I did not.			
19	MR. HOGAN: I remember you mentioned	19	Q Anyone else at Fleming?			
20	that to me.	20	A No, I did not.			
21		21	Q Do you know Brian Christensen?			
22		22	A Not very well.			
23	, ,	23	Q Is he related, to your knowledge, to Steve Christensen?			
24		24				
25	Let's talk about the number of times.	25	A They're not related.			

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	Page 222	2 1	CERTIFICATE	Page 224
1	•	2		
2	,	3) ss.	
3	tomorrow," I can produce him tomorrow. It's up	4	,	
4	to you whether you're really willing to grant the	5	I, LAURA SAVO, a Notary Public in and for the State of Hawaii, do hereby certify:	
15	courtesy or not.	6		
16	MR. HOGAN: Why don't we do this. Why	7	witness herein, Mark Dillon, was sworn by me to	
17	let you go back, contact him. I don't think he's	8	testify to the truth, the whole truth and nothing but the truth;	
8	going to be that long. It may not be a long day	ا و	That the foregoing deposition was taken	
9	and get it over with. Let's talk before the end	1.	down by me in machine shorthand at the time and place herein stated, and was thereafter reduced	
10	of the day. All right?	110	to typewriting under my supervision;	
11	MR. SMITH: Sure.	1	That the foregoing is a full, true and correct transcript of said deposition;	
12	MR. HOGAN: Let's leave him on for	12	That after said deposition was reduced	
13	tomorrow, but I promise to talk to you before	13	to typewriting, the witness, in accordance with Rule 30(e) of the Hawaii Rules of Civil	
14	* 00 1 1 1	15	Procedure, was duly informed of the right to make such corrections as might be necessary to render the same true and correct.	
15	MR. SMITH: Okay.	16		
16	1.1	17	I further certify that I am not of counsel or attorney for any of the parties to	
17		18	this case, nor in any way interested in the outcome hereof, and that I am not related to any of the parties hereto.	
18	•• •	19	of the parties hereto. Witness my hand and seal this 2nd day	
19		20	of April, 2002.	
20		21		
21	were adjourned at 3:11 p.m.)	22	LAURA SAVO, RPR, CSR NO. 347	
22	. ,	23	Notary Public, State of Hawaii My Commission Expires: 11/28/2005	
23		24	My Commission Expires. 11726/2005	
24		25		
25				
23	Page 223			
1	I, the undersigned, MARK DILLON, being first			
2	duly sworn say:			
3	I have read and/or had translated the			
4	foregoing deposition and know the contents			
5	thereof, and I certify that the same is true of			
6	my own knowledge, except as to those matters			
7	which are therein stated upon my information and			
8	belief, and as to those matters, I believe it to			
9	be true.			
10	I declare under penalty of perjury that the			
11	foregoing is true and correct.			
12				
13	Executed on,			
14	2002, at,			
15	•			
16				
17	MARK DILLON			
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